

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF COMPLIANCE BY        )  
The Town of Rosalia                        )  
                                                      )

AGREED ORDER  
No. 3401

To:     The Honorable Ken Jacobs, Mayor  
          Town of Rosalia  
          P.O. Box 277  
          Rosalia, WA 99170

This is an Agreed Order between the Town of Rosalia and the Washington State Department of Ecology to achieve compliance with Chapter 90.48 RCW and Chapter 173-221 WAC by taking certain actions to reduce inflow and infiltration and to complete a wastewater treatment plant upgrade. These actions and their required completion schedule are described below. The Town of Rosalia owns and operates a domestic wastewater collection and treatment system that discharges to Pine Creek (Class AA tributary to Rock Lake, which drains to the Palouse River) during the period of January 1 to March 31 of each year.

I.       RECOGNITION OF THE DEPARTMENT’S JURISDICTION

Chapter 90.48.030 of the Revised Code of Washington (RCW) provides that the Department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, other surface and underground waters of the state of Washington.

The Town of Rosalia agrees to undertake all actions required of it by the terms and conditions of this agreed order and not to contest the Department’s jurisdiction and authority to administer this agreed order.

II.      FINDINGS OF FACT

RCW 90.48.120(2) authorizes the Department to issue Administrative Orders requiring compliance whenever it determines that a person has violated or has the potential to violate any provision of Chapter 90.48 RCW or fails to control the polluting content of waste to be discharged to the waters of the state. The Department’s determination that a violation has occurred, or may occur, is based on the following facts:

1. The Town of Rosalia has committed to construct a facility that will provide secondary treatment of all wastewater, including flows during storm events. An agreed order was issued with the previous NPDES permit and the Town was unable to comply with the requirements due to their inability to obtain funding for design and construction projects.
2. Discharge Monitoring Reports (DMR) for the facility show that the facility exceeds the design criteria for flow during wet weather months and is near design criteria during the summer months indicating infiltration and inflow problems.

III.     CORRECTIVE ACTIONS/COMPLIANCE SCHEDULE

The original order contained the following compliance schedule:

1. Rosalia shall complete the partial collection system repairs and rehabilitation, as follows:
  - a. Apply for design funding before April 1, 2004;
  - b. Begin design by November 1, 2004;

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- c. Finish Design no later than April 30, 2005;
  - d. Begin construction no later than August 31, 2005;
  - e. Substantial completion of construction no later than December 31, 2006.
2. Rosalia shall complete treatment system improvements, as follows:
- a. Apply for design funding before April 1, 2007;
  - b. Begin plant upgrade design no later than January 1, 2008;
  - c. Finish plant upgrade design December 31, 2008;
  - d. Apply for construction funding before April 1, 2008;
  - e. Begin construction no later than December 31, 2008;
  - f. Substantial completion of construction by December 31, 2009;

For these reasons, and in accordance with RCW 90.48.120(2), IT IS AGREED that the Town of Rosalia shall take the following actions and not contest the Department's jurisdiction and authority to administer this order. The corrective actions are divided into the sewer collection system improvements as well as sewage treatment plant improvements. The system improvements initially were divided into "phases" listed in Table 7-6 of the Town of Rosalia Wastewater Facilities and General Sewer Plan (approved by Ecology on November 22, 2002). These actions are necessary to satisfy the requirements of WAC 173-201A and 173-221:

3. Rosalia shall complete the partial collection system repairs and rehabilitation, as follows:
- a. Apply for design funding before December 30, 2005;
  - b. Begin design by July 30, 2006;
  - c. Finish Design no later than October 30, 2006;
  - d. Begin collection system repair no later than June 30, 2007;
  - e. Substantial completion of construction no later than October, 2007.
4. Rosalia shall complete treatment system improvements, as follows:
- a. Apply for design funding before December 30, 2007;
  - b. Begin plant upgrade design no later than June 30, 2008;
  - c. Finish plant upgrade design by April 30, 2009;
  - d. Apply for construction funding before December 30, 2009;
  - e. Begin construction no later than July 30, 2010;
  - f. Substantial completion of construction by December 31, 2011;
  - g. Wastewater treatment plant operational and achieving permit compliance no later than February 28, 2012.

#### IV. REGULATORY APPROACH

The Town of Rosalia's NPDES permit will expire June 30, 2006. A letter from the Town has asked for an extension of the dates in their agreed order. The Town applied for design funding from the Department of Ecology in 2004 and was denied. The Town then began to pursue grant monies from Community Development Block Grant, which first required an income survey be completed to establish eligibility. The Town completed the survey and has secured funding for both design and for collection system repairs. In order to give certainty to the schedule for their completion the Department and the

Town of Rosalia have agreed to this Agreed Order formalizing the steps and schedule the Town of Rosalia will take that are necessary to satisfactorily complete collection system repairs and to finish the wastewater treatment plant upgrade. The conditions in this Order incorporate the schedule agreed to by both the Town of Rosalia and the Department of Ecology.

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This schedule modifies the facility upgrade milestone dates listed in Table 7-6 ("Summary of Sewer System Improvements and Phasing") of the Facility Plan (approved by Ecology on November 22, 2002.)

#### V. PROGRESS REPORTING

Beginning on December 30, 2006, the Town of Rosalia shall submit annual progress reports to the Department containing the following information:

1. Actions taken in the preceding year to comply with the schedule in Section III of this order;
2. Actions planned in the coming year to comply with the schedule contained in Section III of this order.

#### VI. AMENDMENTS TO THE AGREED CORRECTIVE ACTIONS

Amendments to the agreed corrective actions may be requested for good cause, such as when an application for grant or loan funding necessary for the project has been denied or substantially reduced. To be effective, all proposed amendments must be requested in writing at least thirty (30) days prior to the implementation date, signed by the person with signature authority for each party and attached to the agreed order.

#### VII. TERMINATION OF THE AGREED ORDER

The agreed order shall be terminated when both parties agree that all compliance actions held in the agreed order and any amendments have been met.

#### VIII. DISPUTE RESOLUTION

If a dispute arises between the parties regarding any noncompliance with this agreed order, the parties shall attempt to resolve the dispute by informal resolution. A dispute shall be considered to have arisen when one party notifies another, in writing, that there is a dispute. If the parties cannot resolve the dispute informally within thirty (30) days, the Town shall serve on the Department a written Statement of Position. Within thirty (30) days thereafter, the Department shall provide the Town with a final administrative decision. The position advanced by the Department shall be considered binding unless the Town elects to pursue arbitration of the dispute. In order to pursue arbitration, the Town must hire an arbitrator approved by the Department within thirty (30) days of receiving the Department's administrative decision. The arbitrator shall determine whether the Department's administrative decision is consistent with this agreed order. In making this determination, the arbitrator shall review this agreed order, the Town's Statement of Position, the Department's final administrative decision, and evidence from the Town and the Department. The arbitrator will uphold the Department's administrative decision unless the Town demonstrates, by preponderance of evidence, that the Department's administrative decision is inconsistent with this agreed order.

**DATED this 22<sup>nd</sup> day of June 2006 at Spokane, Washington.**

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James M. Bellatty  
Section Manager  
Water Quality Program  
WA State Dept. of Ecology/Eastern Regional Office

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The Honorable Ken Jacobs  
Mayor  
Town of Rosalia